



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 22, 1996

Mr. Ron M. Pigott
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR96-0759

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 39768.

The Texas Department of Public Safety (the "department") received an open records request for all "applications, training accommodations, reprimands, complaints, grievances or disciplinary actions" pertaining to an identified state trooper. You state that the department has made available to the requestor all of the requested information except for certain records pertaining to a pending "Administrative Inquiry." You contend these records are excepted from required public disclosure pursuant to section 552.108 of the Government Code.

Section 552.108, known as the "law enforcement" exception, excepts from required public disclosure:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . [and]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution

When a governmental body claims section 552.108, the relevant question this office must address is whether the release of the requested information would undermine a legitimate interest relating to law enforcement or prosecution. Open Records Decision No. 434 (1986). In Open Records Decision No. 287 (1981), this office observed that the best judge of whether the release of a law enforcement agency's records and notations would unduly interfere with law enforcement was ordinarily the law enforcement agency possessing the record, but that the agency could not arbitrarily relegate information to that category. Whether disclosure of particular records will unduly interfere with law enforcement must be decided on a case-by-case basis. Attorney General Opinion MW-381 (1981).

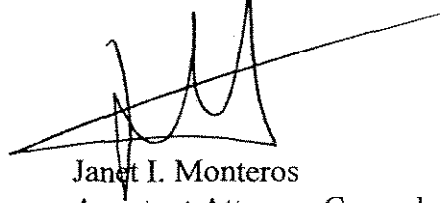
Because the records at issue do not involve the department's "investigation . . . of crime," we must determine whether the release of the requested materials would "unduly interfere" with the department's law enforcement interests under section 552.108(b). Section 552.108(b) excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution" This section excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would unduly interfere with law enforcement and crime prevention. Open Records Decision No. 531 (1989) at 2 (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). When section 552.108(b) is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how releasing the information would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) at 3.

You contend the requested information should be withheld because, although the investigation underlying the administrative inquiry has been conducted, it has not yet been reviewed by the state trooper's supervisors. You go on to state, however, that "[o]nce the file is complete, and [the trooper] has been advised of any action taken, the Department believes this file to be open" to the public. You have not explained, however, why the release of the information at this time would unduly interfere with any law-enforcement effort of the department.¹ We therefore conclude that you have not met your burden in establishing the applicability of section 552.108(b). Accordingly, the department must release the requested information, to the extent that it currently exists, at this time.

¹Based on the information before us, the trooper in question appears to be fully cognizant of the allegations against him and in fact has responded in writing to those allegations.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/RWP/rho

Ref.: ID# 39768

Enclosures: Submitted documents

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(w/o enclosures)